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SUBJECT: TICK-TOCK: TIME IS RUNNING OUT ON INDONESIA'S
ANTI-CORRUPTION COURT LAW

REF: JAKARTA 1818

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11. (SBU) SUMMARY: Parliament's passage of the Anti-Corruption Court law by a December 2009 deadline poses a critical challenge to the future of anti-corruption reform in Indonesia. The Anti-Corruption Court has been a key part of the Corruption Eradication Commission's (KPK) perfect prosecution record. A version of the legislation remains pending in Parliament, and President Yudhoyono has pledged to extend the court's mandate via decree if Parliament fails to act in time. In either scenario, the KPK will most likely face a less-welcoming court, which could make prosecutions more difficult. How the GOI handles this legislation will test the Parliament and President's anti-corruption resolve. End Summary.

ANTI-CORRUPTION COURT'S MANDATE UP FOR RENEWAL

12. (SBU) The unprecedented success of the Corruption Eradication Commission (KPK) and the Anti-Corruption Court (ACC) has created many enemies for the two bodies in Parliament, having convicted several sitting members of Parliament of corruption. The ACC was established in tandem with the KPK in 2002 in order to handle corruption cases involving high level government officials, significant losses to the state, or strong public interest. In December 2006, two alleged corrupters challenged the constitutionality of the court, stating that defendants in the ACC were treated differently than those tried in the regular courts. The Constitutional Court agreed that this double standard was unconstitutional and gave the parliament three years to pass a revised law. The President sent the current draft Anti-Corruption Court law to Parliament in August 2008, but it remains in committee awaiting deliberation (reftel).

DIFFERENCES IN LEGISLATION

13. (SBU) The two top issues that will determine the independence and effectiveness of the Anti-Corruption Court are: composition of career and non-career judges; and plans for expanding the Anti-Corruption Courts to the provincial level. At present, the Anti-Corruption Court's judge composition always has a non-career judge majority, either three non-career to two career judges or two to one, depending on the size and importance of the case. The draft Anti-Corruption Court bill sidesteps the judge composition question. The Supreme Court Chief Justice or Provincial High Court Justice could be tasked with determining the proper composition. This lack of specificity potentially removes

one of the key provisions of the law. The prominent role of the non-career judges is a key reason for the Anti-Corruption Court's independence and positive rulings for the KPK, according to many analysts.

¶4. (SBU) The current Anti-Corruption Court bill calls for the establishment of Anti-Corruption Courts in every provincial capital. These Courts would rule on all corruption cases, both from the KPK and Attorney General's Office. At present, there is one Anti-Corruption Court in Jakarta that rules on KPK cases only. This proposed expansion raises implementation concerns, particularly on human resource capacity. The current Anti-Corruption Court took nearly two years to get up and running. Selecting qualified non-career judges for 33 provincial courts, providing training, and approving sufficient budgets could stall this court development. Further, this court proliferation would dilute the elite or specialized nature of the Anti-Corruption Court, which could threaten its credibility and independence.

¶5. (SBU) Civil society leaders have proposed an alternative Anti-Corruption Court law that would keep non-career judges as a majority on any corruption case. The civil society draft also would limit the Anti-Corruption Court expansion to five regional Anti-Corruption Courts that could handle cases outside of Jakarta. Civil society leaders are lobbying Commission III and other Parliament leaders, and met with Speaker Laksono on May 18. Civil society leaders are pessimistic they will be able to get their recommendations into the current draft law. They are looking to the Presidential Decree and the next Parliament's revisions to the law as opportunities to influence the Court's future.

HUNG-UP IN PARLIAMENT

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¶6. (SBU) The draft Anti-Corruption Court law is currently under review in a special committee within Parliament's Legal Commission (Commission III). Speaker of Parliament Agung Laksono has promised to consider this bill before Parliament adjourns in October; initial deliberations are set for the week of June 15. Civil society leaders and political analysts are skeptical that the Parliament will be able to pass this contentious bill before the Constitutional Court deadline. The Speaker did not list the Anti-Corruption Court bill in his top legislative priorities for the remaining four months of this Parliament.

¶7. (SBU) The new Parliament would have less than two months to pass the key anti-corruption legislation. A majority of legislators will be new to Parliament when the next Parliament convenes in October. If the current parliament does not pass the bill before October, civil society and government contacts do not believe the new Parliamentarians will have sufficient time to learn about the nuances of the law and pass this key legislation before the deadline. Presidential legal advisor Denny Indrayana has said that the President would issue a Presidential Decree to allow the court to continue to operate if Parliament fails to pass the law in time. One prominent member of Parliament indicated that he would support a Presidential Decree as a short-term solution to keep the Court in operation and give Parliament more time to deliberate on the bill.

CONSTITUTIONAL QUESTION

¶8. (SBU) The constitutionality of the Presidential Decree could be ambiguous. The decree could fail to address a component of the 2006 Constitutional Court's complaint against the ACC: that corruption suspects receive different treatment depending on which court the case is tried. Some KPK contacts have suggested that the ACC court members are biased by a strong desire to punish corrupt activities, supporting the Constitutional Court ruling. A Constitutional Court contact indicated that a Presidential Decree would

likely be unconstitutional, but could not speculate on whether the court would take a stand on the issue. Contacts suggest that a corruption defendant convicted under a presidentially-extended ACC could launch an appeal of the conviction on constitutional grounds, which could hamper the anti-corruption drive.

CORRUPTION ERADICATION WITH OR WITHOUT THE ACC

¶9. (SBU) The Anti-Corruption Court has been a key factor in the KPK's success, but not the only one. The KPK has a strong mandate to prevent corruption activities in addition to the investigation and prosecution of corruption. The KPK has instituted mandatory wealth reporting and gratuity reporting by public officials. As a component of their prevention activities, the KPK has developed a train-the-trainer anti-corruption education initiative and worked to generate greater public support in the fight against corruption. The KPK has also worked with the State Ministry of Administrative Reform to improve the provision of public services, a major source of corruption at the local level. The KPK also monitors the administrative management of state and public institutions, creating an important internal control system. These preventive elements of the KPK's mission are not contingent on the existence of the ACC.

A ROAD FORWARD FOR THE KPK

¶10. (SBU) The end of a specialized Anti-Corruption Court may not be the end of the KPK. If the ACC ceases to exist, the KPK would prosecute corruption cases in the regular court system. Although the KPK's rate of successful prosecutions would likely decline, KPK and legal reform NGO contacts suggest that the KPK could still win cases in the regular courts. Some major institutional advantages of the KPK would still continue if there were no ACC. The KPK would still have a significant operating budget, greater independence in investigations, and robust investigatory powers, including the ability to use wiretapping. With the KPK's institutional advantages in the regular courts, the KPK could demonstrate that its success is not dependent on the ACC, but on robust investigatory techniques and strong evidence of corruption.

ANTI-CORRUPTION COURT LEGISLATION TESTS GOVERNMENT'S RESOLVE

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¶11. (SBU) Parliament's passage) or not) of the draft Anti-Corruption Court is a major litmus test for the anti-corruption reform movement in Indonesia. How Indonesia's parliament handles the renewal of the Anti-Corruption Court law will send a powerful signal to the Indonesian public and would-be corrupters, according to civil society contacts. Corruption eradication has been and continues to be a main component of President Yudhoyono's reform agenda. President Yudhoyono has been a strong champion of Indonesia's anti-corruption efforts and met with Speaker Laksono to encourage Parliament to pass the bill. Additionally, President Yudhoyono has offered a Presidential Decree as a potential extension of the court's mandate.

NORTH